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IN THE

Supreme Court of the United States

No. 573

OCTOBER TERM, 1927.

GREGORIO AGONCILLO, BALDOMERO ROXAS AND CATALINO LAVADIA,

Petitioners,

versus

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS AND BRIEF IN SUPPORT THEREOF.

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INDEX

	Page
PETITION FOR WRIT OF CERTIORARI ..	1
NATURE OF THE CASE	2
MAIN POINT INVOLVED IN THE CASE ..	10
REASONS FOR THE ALLOWANCE OF THE WRIT	11
BRIEF IN SUPPORT OF THE PETITION ..	13
OPINION OF THE COURT BELOW	15
THE QUESTIONS OF LAW	16
ARGUMENT	17

STATUTES CITED.

Acts of Congress:

Philippine Autonomy Act	10, 11, 12, 14, 15, 16
February 13, 1925, 43 Stat. at L. 940, Fed. Stat. Anno. Supp. 1925, p. 90	13

Act of Philippine Commission:

Compiled Acts of Philippine Commission, section 2952	2

Acts of Philippine Legislature:

Act No. 2612	2, 7, 10, 15, 16
Act No. 2747	2, 5, 7, 9, 10, 15, 16

Page

Act No. 2938 ..... 2, 6, 9, 10, 15, 16

CASES CITED.

Alejandrino v. Quezon, 271 U. S. 528, 70 L. ed. 1071 ..... 11, 14

Ingenohl v. Olsen & Co., 71 (U. S.) L. ed. (Adv. 517) 11

Posadas v. City of Manila, No. 363, decided May 31, 1927 ..... 11, 14

Wright v. Ynchausti & Co., 71 (U. S.) L. ed. (Adv. 267) 11, 14

Yu Kong Eng v. Trinidad, 271 U. S. 500, 70 L. ed. 1059 ..... 11, 14

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VERSUS

THE GOVERNMENT OF THE PHILIPPINE ISLANDS,

Respondent.

To the Honorable, the Supreme Court of the United States:

Your petitioners, Gregorio Agoncillo, Baldomero Roxas and Catalino Lavadia, respectfully pray that a writ of certiorari may issue to review the judgment of the Supreme Court of the Philippine Islands rendered April 11, 1927, in the case therein entitled "The Government of the Philippine Islands, plaintiff, versus Gregorio Agoncillo, Baldomero

Roxas and Catalino Lavadia, defendants," being No. 27225 in said Court.

NATURE OF THE CASE

This action was originally brought in the Supreme Court of the Philippine Islands under section 2952 of the Compiled Acts of the Philippine Commission, for the purpose of ousting the defendants, the petitioners here, from the offices of directors of the Philippine National Bank. The gravamen of the complaint filed in this case was the alleged invalidity of the amendments to section 4 of Act No. 2612 of the Philippine Legislature made by section 1 of Act No. 2747 and by section 1 of Act No. 2938, under and by virtue of which the defendants were elected directors of the Philippine National Bank.

Act No. 2612, entitled "An Act Creating the Philippine National Bank," was passed by the Philippine Legislature, and approved February 4, 1916. The relevant parts of the act read as follows:

> "Section 1. There is hereby created a bank to be known as the Philippine National Bank, the short title of which shall be the National Bank. Its principal domicile and place of business shall be in the city of Manila.

"Sec. 2. The said National Bank, upon its organization, shall be a body corporate and shall have power:

(a) To prescribe its by-laws;

(b) To adopt and use a seal;

(c) To make contracts;

(d) To sue and be sued;

(e) To exercise the powers granted in this act and such incidental powers as may be necessary to carry out the business of banking within the limitations prescribed by this act; and

(f) To exercise, further, the general powers mentioned in the Corporation Law in so far as they are not inconsistent or incompatible with the provisions of this act.

"Sec. 3. The capital of the National Bank shall be twenty million pesos, Philippine currency, divided into two hundred thousand shares of the value at par, of one hundred pesos, Philippine currency, each.

* * * * * * *

"Sec. 4. The Government of the Philippine Islands not later than January thirty-first, nineteen hundred and seventeen, shall

purchase one hundred and one thousand shares, at par, of the said National Bank, the payment for said shares of the government to be made as hereinafter provided. Ninety-nine thousand shares of said capital stock shall be offered to the public at par, as hereinafter provided."

Section 5 of the act appropriated the amount necessary to pay for the shares to be purchased by the Government of the Philippine Islands, and prescribed the method of voting the shares of stock so purchased by the government, as follows:

> "That the voting power of all stock purchased directly by the Philippine Government as an investment from the general funds of the government, and the voting power of all stock purchased for the benefit of the Insurance Fund, of the Public Works Bonds Sinking Fund, and of the Friar Lands Bonds Sinking Fund, shall be vested exclusively in the Governor-General."

Section 20 thereof in part provided:

> "The affairs and business of the National Bank shall be managed by a Board of

> Directors consisting of the President of the bank, who shall be Chief Executive thereof and chairman of the board at the same time, one Vice-President, who shall assist the President and act in his stead in case of absence or incapacity, and five members elected as hereinafter provided."

And section 21 of the same act contained the following provision:

> "The President and Vice-President shall be appointed by the Governor-General, by and with the consent of the Upper House of the Philippine Legislature, and may be removed for cause by said Governor-General by and with the consent of said House. The five remaining members shall be elected and may be removed in accordance with the provisions of Act Numbered Fourteen Hundred and Fifty-nine, the Corporation Law."

Act No. 2747, entitled "An Act to Amend in Certain Particulars Act Numbered Twenty-six Hundred and Twelve, Entitled 'An Act Creating the Philippine National Bank'," was passed by the Philippine Legislature, and approved February 20, 1918. Section 1 of this act, by amending section 4

memorable act in supporting the Government on the question of the repeal of Judiciary Law (which) stands a living reproach to such as can believe . . . that you would surrender the chastity of the Court to the lust of envy . . . . The weight of your authority then calmed the tumult of faction, and you stood, as you must continue to stand, a star of the first magnitude.' " (Warren, The Supreme Court in United States History, Vol. 1, pp. 269-273.)

WHEREFORE, it is respectfully prayed that the petition for a writ of certiorari be granted.

Respectfully submitted,

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of Act No. 2612 above mentioned, prescribed a new method of voting the stock of the Philippine Government in the National Bank, as follows:

> "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a committee consisting of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

Act No. 2938, entitled "An Act to Amend Act Numbered Twenty-six Hundred and Twelve, Entitled 'An Act Creating the Philippine National Bank,' as Amended by Act Numbered Twenty-seven Hundred and Forty-seven," was passed by the Philippine Legislature, and approved January 30, 1921. By this act the bank was authorized to increase its capital stock from P20,000,000.00 to P50,000,000.00, and the Philippine Government was authorized to purchase, at par, shares of the stock of the bank to the aggregate number of not less than 153,000. The provision of Act No. 2612, as amended by Act No. 2747, relating to the method of voting the stock

of the Philippine Government in the bank, was further amended to read as follows:

> "The voting power of all the stock of the National Bank owned and controlled by the Government of the Philippine Islands shall be vested exclusively in a board, the short title of which shall be 'Board of Control,' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives."

Sections 16, 17 and 18 of Act No. 2612, as amended by Act No. 2747, were also further amended to read as follows:

> "Sec. 16. The affairs and business of the National Bank shall be directed and its property managed and preserved, unless otherwise provided in this act, by a board of directors consisting of nine members duly elected as hereinafter provided, who shall be paid a per diem of thirty pesos for each session of the board of directors attended by them.
>
> "Sec. 17. Within the first twenty days after the approval of this act, and annually on the first Tuesday after the first Monday

in March, beginning with the year nineteen hundred and twenty-two, the stockholders shall meet to elect the members of the board of directors for the current year, each stockholder or proxy to be entittled to as many votes as he may have shares of stock, registered in his name on the thirty-first of January last preceding and held by him at the time of the election. Immediately after the election, the directors elected shall organize as such and elect from amongst themselves a president and a vice-president, which latter shall assist the president and act in his stead in case of absence or incapacity: *Provided*, That no director or employee of any other bank shall be eligible as member of the board of directors of the National Bank.

"Sec. 18. The orders and resolutions of the board of directors shall be carried out by a general manager who shall be chief executive of the bank and shall be paid an annual salary to be fixed by the board of directors with the approval of the Board of Control, and an assistant general manager, who shall assist the general manager and act in his stead in case of absence or incapacity, and

> shall be paid a salary to be fixed by the board of directors, with the approval of the Board of Control. The general manager shall be appointed by the board of directors, with the advice and consent of the Board of Control, and may be removed in a like manner."

In accordance with the provisions of Act No. 2938, section 47 of the by-laws of the Philippine National Bank provided:

> "The voting power of all stock owned and controlled by the Government of the Philippine Islands is vested exclusively in the 'Board of Control' composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representitives" (R. 66).

These by-laws were adopted February 18, 1921, and approved by the board of control composed of Charles E. Yeater, as Acting Governor-General of the Philippine Islands, Manuel L. Quezon, as President of the Philippine Senate, and Sergio Osmeña, as Speaker of the Philippine House of Representatives (R. 28-84).

Both Act No. 2747 and Act No. 2938 had been in force for a number of years and acted upon by

the executive officers of the Philippine Government, including the present Governor-General. By section 19 of the Philippine Autonomy Act all laws enacted by the Philippine Legislature are to be reported to Congress, which reserves power to annul them. The acts under consideration were reported to Congress, and have not been annulled.

The Supreme Court of the Philippine Islands (Chief Justice Avanceña and Justices Villamor and Villa-Real, dissenting) held that section 4 of Act No. 2612, as amended by section 1 of Act No. 2747 and by section 1 of Act No. 2938, was invalid in so far as it purported to vest the voting power of the stock of the Philippine Government in the National Bank exclusively in a committee consisting, or in a board of control composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives.

MAIN POINT INVOLVED IN THE CASE

The main point in the case is whether that part of section 4 of Act No. 2612, as amended by section 1 of Act No. 2747 and by section 1 of Act No. 2938, which purported to vest the voting power of the stock of the Philippine Government in the National Bank exclusively in a committee consisting, or in a board

of control composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives, is invalid as in conflict with the provisions of the Philippine Autonomy Act (Act of Congress of August 29, 1916), commonly known as the Jones Law.

REASONS FOR THE ALLOWANCE OF THE WRIT

It is urged that a writ of certiorari should issue for the following reasons:

1. A statute of the United States, to wit, the Philippine Autonomy Act, is involved.

2. This cause involves a question of the most vital importance arising under the Philippine Autonomy Act—a question more far reaching in its effect than the ones decided by this Honorable Court in Yu Kong Eng v. Trinidad, 271 U. S. 500, 70 L. ed. 1059; Alejandrino v. Quezon, 271 U. S. 528, 70 L. ed. 1071; Wright v. Ynchausti & Co., 71 (U. S.) L. ed. (Adv. 267); Ingenohl v. Olsen & Co., 71 (U. S.) L. ed. (Adv. 517); and Posadas v. City of Manila, No. 363, decided May 31, 1927.

3. The Supreme Court of the Philippine Islands failed to follow or give force or effect to the

rulings and decisions of this Honorable Court on the legal propositions involved.

4. The question herein decided below adversely to your petitioners by a divided court, which involves the legal and just construction and effect of important provisions of the Philippine Autonomy Act, should be authoritatively and finally adjudged by this Honorable Court upon and after a full presentation to the Court of the merits of the said question.

5. A full consideration of the case by this Honorable Court will tend to prevent costly and undesirable litigation, and promote justice to all concerned.

WHEREFORE, it is respectfully prayed that this petition for a writ of certiorari be granted.

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THE GOVERNMENT OF THE PHILIPPINE ISLANDS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

BRIEF FOR THE PETITIONERS

This is a petition for a writ of certiorari under section 7 of the Act of February 13, 1925, 43 Stat. at L. 940, Fed. Stat. Anno. Supp. 1925, p. 90, which gave jurisdiction to this Honorable Court to exa-

mine by certiorari the final judgments and decrees of the Supreme Court of the Philippine Islands in all cases in which the Constitution or any statute, treaty, title, or privilege of the United States was involved, or in causes in which the value in controversy exceeded $25,000.00. By section 8 of the act application for the writ is required to be made within six months after the entry of the judgment or decree sought to be reviewed. The judgment of the Supreme Court of the Philippine Islands involved in this petition was entered April 11, 1927 (R. 270).

It is urged that a writ of certiorari should issue for the reason that this cause involves a question of the most vital importance arising under a statute of the United States, to wit, the Philippine Autonomy Act, chap. 416, 39 Stat. at L. 545, Fed. Stat. Anno. Supp. 1918, p. 592. Yu Kong Eng v. Trinidad, 271 U. S. 500, 70 L. ed. 1059; Alejandrino v. Quezon, 271 U. S. 528, 70 L. ed. 1071; Wright v. Ynchausti & Co., 71 (U. S.) L. ed. (Adv. 267); and Posadas v. City of Manila, No. 363, decided May 31, 1927.

OPINION OF THE COURT BELOW

The opinion of Mr. Justice Malcolm of the court below was concurred in by Justices Street, Ostrand, Johns, and Romualdez (R. 217-226). Mr. Justice Johnson filed a separate concurring opinion (R. 228-261), while Chief Justice Avanceña and Justices Villamor and Villa-Real joined in filing a dissenting opinion (R. 261-262).

In reaching the conclusion that section 4 of Act No. 2612, as amended by section 1 of Act No. 2747 and by section 1 of Act No. 2938 of the Philippine Legislature, was invalid in so far as it purported to vest the voting power of the stock of the Philippine Government in the Philippine National Bank in a committee consisting, or in a board of control composed of the Governor-General, the President of the Senate, and the Speaker of the House of Representatives, both Mr. Justice Malcolm and Mr. Justice Johnson proceeded on the theory that membership of the committee or of the board of control mentioned was an office within the purview of the Philippine Autonomy Act, and that the power to vote the stock of the Philippine Government in the Philippine National Bank was an executive function of government vested exclusively in the Governor-General by the Philippine Autonomy Act.

THE QUESTIONS OF LAW

The questions of law presented and the propositions on which the petitioners rely are:

I. Membership of the committee or of the board of control created by section 4 of Act No. 2612, as amended by section 1 of Act No. 2747 and by section 1 of Act No. 2938 of the Philippine Legislature, is not an office within the purview of the Philippine Autonomy Act.

II. The power to vote the stock of the Philippine Government in the Philippine National Bank is not an executive function of government.

III. The Philippine Legislature had authority to prescribe the method of voting the stock of the Philippine Government in the Philippine National Bank.

IV. The Philippine Legislature has all general legislative power such as is exercised by States and Territories.

V. The grant of general legislative power to the Philippine Legislature included the authority to create certain offices and to designate the persons to fill such offices.

VI. Act No. 2747 and Act No. 2938 of the Philippine Legislature have received the implied sanction of Congress.

ARGUMENT

In rendering the opinion of the Supreme Court of the Philippine Islands in the case below, Mr. Justice Malcolm observed:

"The main issue has been sufficiently discussed in the previous case of the Government of the Philippine Islands v. Milton E. Springer, et al., No. 26979. What was said in that decision may be taken as incorporated herein. What differences there are between the two cases on the principal question incline to strengthen rather than weaken the instant case" (R. 223).

In conclusion he said:

"Being guided by the decision in the companion case of the Government of the Philippine Islands v. Milton E. Springer, et al, it results that the defendants shall be ousted and altogether excluded from the offices of directors of the Philippine National Bank which they are unlawfully holding, and that the three directors selected by the Governor-General shall be placed in possession of those offices" (R. 226).

The related suit of the Government of the Philippine Islands v. Milton E. Springer, Dalmacio Costas, and Anselmo Hilario is now pending in this Court on petition for a writ of certiorari to the

Supreme Court of the Philippine Islands; and in order to avoid repetition, it is respectfully prayed that this Honorable Court consider as reproduced here, *mutatis mutandis*, the argument contained in the brief filed in support of the petition for a writ of certiorari in that case.

Respectfully submitted,

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